#14
3/15/01
211/94
173

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re: Patent Application of
ERIC CLEVER ET AL.

Serial No. 09/188,702

Filed: August 13, 1998

For: Hermaphroditic (Genderless) Construction System

Group Art Unit 3712

Examiner Jeffrey D. Carlson

I hereby certify that this document is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents & Trademarks, Washington, D.C. 20231, on March 8, 2001

Norman E. Lehrer, Reg. No. 26,561

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

APPELLANTS' BRIEF ON APPEAL

Pursuant to 37 C.F.R. §1.192, Appellants hereby present their brief on appeal from the Primary Examiner's Final Rejection. A timely filed Notice of Appeal was received in the Patent and Trademark Office on November 8, 2000.

1. REAL PARTY IN INTEREST

The real party in interest is as stated above in the caption.

2. RELATED APPEALS AND INTERFERENCES

Appellants and their legal representative are unaware of any other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision on the pending appeal.

3. STATUS OF THE CLAIMS

Claim 6-12 are pending in the application. Claims 6-12 stand rejected and are on appeal.

4. STATUS OF AMENDMENTS

No amendments were filed subsequently to the final rejection.

5. SUMMARY OF INVENTION

Appellants' invention is directed generally to a construction system which may be used as a toy and which includes hub, rod and block assemblies in which rods are inserted perpendicular to the major plane of said hubs and blocks. The claims on appeal are directed to only one aspect of the overall invention.

More particularly, the appealed invention is directed toward the female connectors of the construction system and primarily the hub such as shown at 21 in Figure 2. This hub is in the form of a substantially round disc-shaped plastic member. The disc-shaped hub 21 has two holes formed therein which are adapted to mate with two-fingered genderless rod connectors 12 (Figure 1) by means of an interference fit when the fingers at the ends of the rods are inserted into the holes. The holes in the disc can be either in the form shown at 22 or the form shown at 23. In both embodiments, each of the holes is substantially triangularly shaped and includes three internal angular corners. As shown to the right of Figure 2, one of the corners in each of the holes is closer to the other hole than the other corners, i.e., they are essentially in the alignment shown to the right of Figure 2.

In the embodiment of the invention referred to as type two connectors in Figure 2, the two holes are interconnected by a narrow passage thus, essentially making one larger hole. In

the embodiment referred to as type 3 connectors shown at the top right of Figure 2, the two holes are distinct from each other and a web of material separates the two holes. These embodiments are, of course, by way of example only.

6. ISSUES

The issues are whether Claims 6-12 are anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 5,137,486 to Glickman and whether Claims 6, 8-10, and 12 are anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,902,259 to Ziegler.

7. GROUPING OF CLAIMS

Although the claims have been grouped together by the examiner in his rejection, Appellants do not believe that all of the claims stand or fall together. More particularly, Appellants believe that the claims should be grouped as follows:

I. Claims 6, 9 and 10.

II. Claims 7 and 11.

III. Claims 8 and 12.

Appellants believe that each of the above groups is separately patentable from each of the other groups.

8. ARGUMENT

With regard to Claim 6-12, the Examiner states that Glickman shows a plastic disc element having facing triangular openings and that these openings are inherently capable of being mated with a 2-finger connector. The Examiner, however, does not believe that the limitation of the openings being capable of being mated with a 2-finger connector has been positively recited. The Examiner goes on to state that the triangular openings are arranged such

that each has one corner nearest each other and that each hole is distinct, separated by a web and that the holes are interconnected to each other by a passage. Appellants respectfully disagree.

Claim 6 requires that there be a triangularly shaped hole including three internal angular corners with one of the corners being closer to the other hole than the other of the three corners. The Examiner points to two openings in the Glickman disc and refers to them as being triangular. However, they are not. They are clearly trapezoidal. In any event, there is no suggestion in Glickman that these openings are adapted to mate with a two-fingered connector. Rather, the openings in Glickman are apparently simply to make the device lighter and/or cheaper.

Claims 7 and 11 further require that there be a web of material separating the two holes from each other. While the Examiner states that Glickman shows this in Figure 2, Appellants do not agree that any part of Glickman should be considered to be the web as claimed by Appellants. Appellants' claimed web is the small amount of material located between the two adjacent openings as clearly shown in Figure 2 of the present application. No part of Glickman includes such a web.

Claims 8 and 12 require that there be a narrow passage extending between the two claimed holes. The Examiner states that the openings on the right in Figure 2 of Glickman are connected by a passage. Appellants most respectfully disagree. There is no part on the right side of Glickman that can be considered to be the narrow passage that extends between two holes.

For the foregoing reasons, it is respectfully submitted that Glickman simply does not anticipate claims 6-12. There are features of these claims not shown by Glickman.

With regard to Claims 6, 8-10, and 12, the Examiner also states that Ziegler discloses two connected triangular openings which are opposite each other, each with an aligned corner and that the openings are inherently capable of being mated with a 2-finger connector. The Examiner believes, however, that the limitation of the openings being inherently capable of being mated with a 2-finger connector has not been positively recited. Appellants respectfully disagree.

The Examiner points to two triangular openings in Figure 11 of Ziegler and states that they are opposite each other with one aligned corner. Appellants most respectfully disagree. These triangular spaces in Ziegler are not holes as claimed. More significantly, however, is the fact that Figure 11 of Ziegler does not show a connector comprised of a substantially round disc shaped plastic member. The element shown in Figure 11 of Ziegler is more cylindrically shaped with some portions removed. It is clearly not disc shaped. Nor does it have holes therein.

Furthermore, while the triangular "openings" of Ziegler may be connected to each other, they are not connected by the claimed narrow passage. In fact, the passage or space between the two opposed triangular openings of Ziegler is very wide relative to the size of the triangular openings. Appellants' claimed narrow opening is shown in the type 2 connector of Figure 2 in their preferred embodiment. It is submitted that no part of Ziegler can be considered to be this claimed narrow passage extending between the two holes.

Since all of claims 6, 8-10 and 12 include features not specifically shown or taught by Ziegler, these claims are clearly not anticipated by that reference.

In view of all of the foregoing, Appellants submit that all of the claims presently in the application clearly and patentably distinguish over the references of record and should be allowed.

Respectfully submitted,

ERIC CLEVER ET AL.

By: _____
Norman E. Lehrer
Registration No. 26,561

Dated: March 8, 2001

APPENDIX

6. Female connectors for use with a genderless construction system wherein said female connector is comprised of a substantially round disc shaped plastic member having two holes formed therein and adapted to mate with a two-fingered genderless connector by means of an interference fit when the fingers are inserted into the holes, at least one of said holes being substantially triangularly shaped and including three internal angular corners, one of said corners of said at least one hole being closer to the other of said two holes than the other two of said three corners.

7. The female connector as claimed in claim 6 wherein said holes are distinct from each other and a web of material is included separating said holes from each other.

8. The female connector as claimed in claim 6 wherein said holes are inter-connected to each other by a narrow passage extending between said holes.

9. The female connector as claimed in claim 6 wherein each of said holes is substantially triangularly shaped and includes three internal angular corners therein.

10. The female connector as claimed in claim 9 wherein one of the angular corners of each of said holes are in alignment with each other.

11. The female connector as claimed in claim 10 wherein said holes are distinct from each other and a web of material is included separating said holes from each other.

12. The female connector as claimed in claim 10 wherein said holes are inter-connected to each other by a narrow passage extending between said holes.

AF
3712

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of
ERIC CLEVER ET AL.

Serial No. 09/188,702

Filed: August 13, 1998

For: Hermaphroditic (Genderless) Construction System

Group Art Unit 3712

Examiner Jeffrey D. Carlson

I hereby certify that this document is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents & Trademarks, Washington, D.C. 20231, on March 8, 2001

Norman E. Lehrer, Reg. No. 26,561

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

TRANSMITTAL LETTER

Enclosed for filing in the above-identified application are the following:

1. An appeal brief in triplicate.

2. Our check in the amount of $155 for the appeal brief filing fee. Please charge any deficiency or credit any overpayment of this fee to the undersigned's deposit account No. 12-1023.

Respectfully submitted,

ERIC CLEVER ET AL.

By: Norman E. Lehrer
Norman E. Lehrer
Registration No. 26,561

Dated: March 8, 2001